

CHARLES R. GWYN AND JOHN R. GWYN

VS.

JOSIAH LEE ET AL.

JULY TERM, 1849.

[HOLDER OF PROMISSORY NOTES—USURY.]

A *bona fide* holder of a negotiable instrument for a valuable consideration, without notice of facts which effect its validity as between antecedent parties, if he takes it by indorsement before it becomes due, acquires a valid title, and may recover upon it, though, as between the antecedent parties, the transaction may be invalid.

The holder of such paper before it is due, is not bound to prove that he is a *bona fide* holder for a valuable consideration without notice ; for the law will presume this, in the absence of rebutting proof.

If the want, or failure, or illegality of the consideration has been established, or if it be shown that the note was lost, or stolen, before it came into the possession of the holder, it is then incumbent on him to show that he has given value for it.

Since the act of 1845, ch. 352, usurious instruments are not, under any circumstances, avoided, but are made valid securities in all courts, no matter by whom proceedings may be instituted upon them, to the extent of the principal sum, and six per cent. interest.

[In his opinion, in this case, in which the facts are fully stated, the Chancellor says :]

THE CHANCELLOR :

This case though not very important with reference to the amount involved in its decision, is yet not destitute of interest to the commercial community.

It appears that some time in the month of April, 1848, the complainants, trading under the firm of Gwyn & Company, placed in the hands of George Baughman, of the firm of Baughman, Nicholson and Cannon, their promissory note for \$1227 33, made payable to the last named firm, dated the 9th of that month, and payable eight months after date, and, as the complainants allege, the note so made and delivered by them to Baughman, was made and delivered upon the offer and agreement of Baughman to procure the same to be discounted for their use at some bank in Baltimore.